

REGULAR MEETING NORTH SMITHFIELD TOWN COUNCIL

OCTOBER 17, 2011

KENDALL-DEAN SCHOOL AUDITORIUM

7:00 P.M.

OPEN FORUM

Rankin Estates/Narragansett Improvement

Mr. Kenneth Trudel of 9 Franconia Drive opposes any settlement with Narragansett Improvement Company and would support a Council decision to litigate this matter all the way to the Supreme Court. He urged the Council to get advice from Attorney Patrick Dougherty.

Mr. Jim Lombardi of 7 Indigo Farm Road raised a concern about the value of homes decreasing in the area by up to forty percent if mining is allowed in the back yards of the residents which in turn will increase taxes throughout the town. He was also concerned with particles in the air due to mining.

(Mr. Zwolenski arrived at 6:51 P.M.)

Once again Mr. Yazbak reiterated that this is a zoning and planning issue and alleged violations precipitated the lawsuit. No part of any agreement has anything to do with mining. He feels neighbors are not receiving complete information.

Mrs. Catherine Hall of 1445 Providence Pike, as a former government attorney, has litigated hundreds of cases against Michael Kelly,

attorney for the developer. She would only settle cases with bad facts; bad facts being a clearly erroneous action by government or an arbitrary or capricious decision by government. Ms. Hall claimed Mr. Kelly did not prevail usually because the cases were not grounded in sound law and certainly not in facts. She urged the Council not to settle this case unless all are convinced that the town was clearly erroneous, that it was arbitrary and that it was capricious.

Ms. Mally Jones of 19 Indigo Farm Road commented that it does not have to be called a mining operation in order for gravel to be extracted. She assumes the town does not want to litigate due to concerns of the cost of the lawsuit. The costs would be borne by the town; however, if it settles, the costs would be shifted from the town to the 300 to 400 homeowners in the area.

REGULAR MEETING

The meeting began at 7:07 P.M. with the prayer and the pledge to the flag. Council members present were Mrs. Charest, Mr. McGee, Mr. Zwolenski and Mr. Yazbak. Ms. Alves was attending a wake and arrived later. Town Administrator Hamilton and Town Solicitor Nadeau were also in attendance.

RANKIN ESTATES/NARRAGANSETT IMPROVEMENT

Mrs. Charest asked that this be placed on the agenda of November 7, 2011 for a longer period than fifteen minutes to enable a number of spokespeople to air their questions/concerns.

Mr. Yazbak asked if there were specific questions, that they be sent ahead of time to either him or the Town Clerk to see which could be answered and which could not due to legal constraints.

EXECUTIVE SESSION

MOTION by Mrs. Charest, seconded by Mr. Zwolenski, and voted 3 to 0 on an aye vote to enter into executive session at 7:21 P.M. pursuant to RIGL 42-46-5(A)(2) Sessions pertaining to collective bargaining or litigation, or work sessions pertaining to collective bargaining or litigation to discuss possible litigation at Silver Pines Development.

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Mr. Yazbak abstained from the vote and from taking part in this discussion based upon advice received from the Ethics Commission.

MOTION by Mr. Zwolenski, seconded by Mr. McGee, and voted 3 to 0 on an aye vote to come out of executive session at 8:01 P.M. and to seal the minutes. No motions were made and no votes were taken.

(Ms. Alves arrived at 8:02 P.M.)

SILVER PINES DEVELOPMENT PHASES 1 AND 2

MOTION by Mr. Zwolenski, seconded by Mr. McGee, and voted unanimously on an aye vote to open executive session discussion to

the Silver Pines developer.

Once again Mr. Yazbak abstained from taking part in this discussion.

Town Planner Robert Ericson stated that Silver Pines Phase 2 has a number of outstanding issues. Fifteen conditions were placed on the preliminary plan approval. It is in limbo because the previous Town Planner did not write a final decision. To get final approval, Mr. Ericson has to be assured that all conditions have been met. Parcel A was transferred in a quit-claim deed and the town would prefer a warranty deed. When questioned by Mr. Zwolenski, Mr. Ericson went through the process for plan approval.

Mr. Zwolenski was told by counsel that the proposal for an assisted living project cannot be connected to Silver Pines Phases 1 and 2; however, the developer has not been credible.

Joseph DeMayo of 62 Alpine Way said the residents have a lot at stake. They were shown a lot of benefits at the time of their purchases that have not materialized.

Mr. Nadeau commented that the stipulations placed by a prior Town Council have been met. The developer has no legal obligation to go forward with Phase 2 even if the final plan is approved. These are issues between the residents and the developer. If the residents made purchases because of promises made to them, they probably

should pursue the matter with the developer.

Attorney Richard Kirby gave a history of the project noting that the original application in 1980 was for 64 two-bedroom units. The project went into foreclosure at one point. A well was installed in the 1990s and tied in to the public system by the prior owner of the property. For over ten years the town drew water into its public water supply and there were no units on Phase 1. When DAS began to build, they built a water and sewer line from the Town Hall all the way to the project. They had 42 sales and were then denied a water tie-in from a well that the prior owner had installed and that was producing 53 gallons per minute. That initiated a lawsuit. They lost the 42 sales because DAS could not guarantee that they would get certificates of occupancy. To answer Mr. DeMayo's criticism about not moving forward with Phase 2, Mr. Kirby claimed that had the town not denied the developer water, they would have been well into Phase 2 because the market was hotter at the time.

Mr. Kirby continued that when appearing before the Planning Board for Phase 2, the board asked for another means of ingress/egress, although it was not a requirement, because they did not like the design of having too long a road. Mr. Kirby said they would try to accommodate that. Subsequently, the developer acquired the property on Victory Highway. To build out Phase 1, he did not want to have to build out Phase 2 and run trucks back and forth while the residents had already purchased homes. The developer wanted to

create a haul road. It was offered to the Planning Board as another ingress/egress but the developer did not want to be constrained to that for Phase 2 because the property cost a lot of money.

Mr. Kirby asserted that the developer has complied with all conditions of the zone change as well as with the 15 stipulations placed on Phase 2.

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Mr. Kirby stated that ultimately the opportunity arose for the developer to connect into the Woonsocket public water system. The town could not afford the connection so his client paid \$100,000 for the connection and got relief from the particular stipulation for Phase 2 of having to have another 53 gallon per minute well drilled.

Mr. Kirby's client is willing to do whatever the town feels is necessary for the recording of an appropriate warranty deed. The developer is waiting for the market to turn and fully intends to meet all the requirements for Phase 2 and continue with the development.

Based on a memo written by Building Inspector Robert Benoit dated September 29, 2005 concerning Silver Pines Phase 2 "Code Compliance", Mr. Zwolenski did not feel this backed up Mr. Kirby's assertion that Stipulation No. 1 had been complied with. He had

questions about the accessibility of the sidewalks.

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted 4 to 0 (Mr. Yazbak abstained from the discussion) on an aye vote to continue this discussion to the December 19, 2011 meeting.

PUBLIC HEARING RE: AMENDMENT TO ZONING ORDINANCE – NORTH PINE RESIDENCES, LLC AND DAS CONTRACTING CORPORATION

This is a petition to rezone property described as Assessor's Plat 1, Lots 127 and 134, located at 1118 Victory Highway and property described as Assessor's Plat 1 Lot 330 located at 1152 Victory Highway from Rural Agricultural (RA) to Urban Residential (RU-20). Petitioners are North Pine Residences, LLC and DAS Contracting Corporation.

Mr. John Quirk of 38 Alpine Way asked if it would be a town requirement that the private road that serves the residents of Silver Pines be an access road to the new project.

Attorney Richard Kirby responded that there will be an ingress/egress road for the benefit of Phase 1 and Phase 2 residents for access to Victory Highway.

Because the Silver Pines Association does not have their roads plowed until snow has stopped, Mr. Alan Nelson of 21 Silver Pines

Boulevard wondered what the liability to the residents would be if emergency vehicles were not able to access the roads to get to the proposed assisted living facility.

Mr. Michael Desmond conducted the traffic analysis with the understanding that access to and from the facility would be totally by Victory Highway/Route 102. It was guesstimated that fifty percent of Phase 2 residents and twenty-five percent of Phase 1 residents would use the access to go out through Victory Highway.

Mr. Zwolenski had concerns with a number of residents walking towards Slatersville Plaza and whether the access road sidewalks would be ADA compliant.

Mr. Colin Kane of Peregrine Group LLC presented his findings in a combined fiscal and economic impact study. He has determined there are very little incremental additional services required by the town to service this project. Most of the impact will come from public safety issues. Mr. Kane estimates an additional 12 calls for the police department at a cost of \$6,000 and an additional 30 calls for the fire department at a cost of \$45,000.

The primary revenue from this project will be property taxes. Mr. Kane puts the assessed value at roughly \$9.3 million and based upon the 2011 commercial tax rate, yielding annual taxes collected at approximately \$164,000. This equates to a net positive impact of

\$100,000 to \$113,000.

The economic impact will come from four basic activities:
Pre-development Services – Regional businesses will provide services in the areas of architectural design, engineering, financial planning, legal services, marketing support and banking;
Construction Trades – Local and regional companies contracted to provide supplies and labor

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to build the project; Commercial Services – On-site and third party commercial services, including landscape maintenance, snow removal,

food service, trash removal, on-site management, ongoing leasing, and building maintenance will stimulate job growth, household earnings and economic activity across the region; and Retail Services – New employees, specific to the proposed facility and those associated with regional vendors, will utilize local retail establishments for dining and shopping.

Mrs. Laurie DeMayo, realizing that an RU-20 zone could include assisted living, active living or a nursing home, asked if the developer was committed to the project being an assisted living facility.

Mr. Kirby stated the project is proposed as an assisted living facility.

Mr. Ericson would like to see a study done of what would be the impact to the town if the facility were to become an all active adult community.

Mr. Zwolenski asked that in the future any materials be provided to the Town Clerk in adequate time to be placed in the Council packets for their review.

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted 4 to 0 on an aye vote to continue this public hearing to December 19, 2011.

DRAINLAYER'S LICENSE – CANESI BROS. CONSTRUCTION INC.

MOTION by Mrs. Charest, seconded by Mr. McGee, and voted unanimously on an aye vote to move this item up next on the agenda.

MOTION by Mrs. Charest, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to approve a drainlayer's license to Canesi Bros. Construction Inc.

SLATERSVILLE FILM CONTRACT

Ms. Hamilton introduced Christian deRezendes who will be making the 30-minute documentary on the history of Slatersville and its residents who have lived and worked in the community for decades.

Ms. Hamilton hopes to have the contract ready soon.

MOTION by Mrs. Charest, seconded by Mr. McGee and Ms. Alves, and voted unanimously on an aye vote to table this matter to November 21, 2011.

AWARD OF BID RE: WIDE AREA TURF MOWER

MOTION by Mrs. Charest, seconded by Mr. McGee, and voted unanimously on an aye vote to move this item up next on the agenda.

MOTION by Mrs. Charest, seconded by Mr. McGee, and voted unanimously on a roll call vote to award the bid for the purchase of a wide area turf mower to Turf Products in the amount of \$64,225.27 based upon the recommendations of Public Works Director Raymond Pendergast and Finance Director Brian Silvia.

Funding for this purchase will come from the FY2012 Capital Budget and is a savings of \$3,774.73 from the budgeted amount of \$68,000.

AWARD OF BID RE: $\frac{3}{4}$ TON PICK-UP TRUCK

MOTION by Mrs. Charest, seconded by Mr. McGee, and voted unanimously on a roll call vote to award the bid for the purchase of a new $\frac{3}{4}$ ton pick-up truck to Paul Masse Chevrolet in the amount of \$31,521.00 based upon the recommendations of the Public Works Director and the Finance Director.

Funding will come from the FY2012 Capital Budget. The budgeted amount was \$50,000.

AWARD OF BID RE: ONE-TON DUMP TRUCK

MOTION by Mrs. Charest, seconded by Mr. McGee and Ms. Alves, and voted unanimously on a roll call vote to award the bid for the purchase of a one-ton dump truck to Liberty Chevrolet, Inc. in the amount of

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\$39,944.00 based upon the recommendations of the Public Works Director and the Finance Director.

Funding will come from the FY2012 Capital Budget. The budgeted amount was \$60,000.

MOTION by Mr. Zwolenski, seconded by Mrs. Charest, and voted unanimously on an aye vote at 9:53 P.M. to extend the meeting to 10:30 P.M.

CONSENT AGENDA

Mr. Zwolenski asked that the minutes of September 19, 2011 be removed for discussion.

Mrs. Charest had a question on the bills.

Mr. Yazbak asked that the report from the Public Safety Commission also be removed.

MOTION by Mrs. Charest, seconded by Ms. Alves, and voted 4 to 0 (Mr. McGee had stepped away for a moment) on an aye vote to approve the following: 1.) Monthly financial statements for September; 2.) Budget Committee minutes for September 22, 2011; 3.) Conservation Commission minutes for August 9, 2011; 4.) Parks & Recreation Commission minutes for June 27, 2011; 5.) Animal Control monthly report for September 2011; 6.) NSF&RS, Inc. monthly report for September 2011; 7.) Resolution Re: Pension Reform from the City of Woonsocket and 8.) Resolution Re: Repeal of Tax on Tours from the Town of Middletown.

Minutes of September 19, 2011

On Page 246, Mr. Zwolenski had asked if Mr. Desmond had prepared the traffic study and Mr. Desmond responded that he did not, that an associate had prepared it. Mr. Zwolenski stated he had also asked if Mr. Desmond had considered doing pedestrian circulation flow and Mr. Desmond stated they had not.

MOTION by Mr. Zwolenski, seconded by Mr. McGee, and voted unanimously on an aye vote to amend those minutes as noted above.

Payment of Bills

Mrs. Charest wondered why the town was paying for food for the police officers who worked at the Pumpkinfest.

Because he had a question on an invoice from the RI Interlocal Risk Management Trust (“The Trust”), MOTION by Mr. Yazbak, seconded by Ms. Alves, and voted unanimously on an aye vote to remove from the bills the payment of \$10,000 to “The Trust” to allow time for the Town Administrator to research the matter.

MOTION by Mrs. Charest, seconded by Mr. McGee, and voted unanimously on an aye vote to approve payment of the following: General Fund - \$156,360.53; Sewer - \$8,024.29; Water - \$63,043.72; School Department - \$1,440,455.00; and Fire Department - \$195,151.33 for a total of \$1,863,034.87.

Public Safety Commission Report on the Intersection of North Main Street and Route 102/Victory Highway.

MOTION by Mrs. Charest, seconded by Mr. Yazbak, and voted unanimously on an aye vote to table this to the November 21, 2011 meeting.

IT PROCESS FOR TOWN COMPUTERS

Mrs. Charest feels this matter is in great shape and she would like to move forward this evening as effectively and as expeditiously as possible. A meeting was held recently and she believes all the questions that the town had were answered.

MOTION by Mrs. Charest, seconded by Mr. Zwolenski, Mr. McGee and Ms. Alves, and voted unanimously on an aye vote to ask the School

Committee and Superintendent Lindberg to permit School Department Director of Technology Eric Butash to continue to be involved with the development of the specifications and possible lease funding options as well as the potential implementation if approved by the Town Council.

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MOTION by Mrs. Charest, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to direct Finance Director Brian Silvia to work directly with Mr. Butash regarding potential funds to identify and then recommend a funding plan for all three stages based on the recommendations provided in Mr. Butash's report provided at a previous meeting and then to return to the Council with the recommendations as soon as possible.

Mrs. Charest was asked to find out if Mr. Butash was working as an individual or on behalf of the School Department in regards to his payment.

Mrs. Charest asked if the administration had gone any further with combining payroll.

Mr. Silvia stated the School Department has a new payroll person and he is getting up to speed.

DONATION OF YARD SALES TO FOOD PANTRY

Ms. Hamilton had originally thought of having an annual town-wide yard sale with the permit fees being donated to various groups. This year the money was to be donated to the food pantry.

Mr. Nadeau had expressed some concerns about this process.

Ms. Hamilton stated that she personally will be making the donation for those people who did get a yard sale for October 22nd.

Mr. Yazbak realized that Ms. Hamilton had good intentions and asked if next year a group has a bonified 501C3, why can't they pull a permit for one location for one day and they can sell tables for five or ten dollars. Then everyone goes to one location.

Mr. McGee thought it might be difficult for people to bring their items to one place rather than having the yard sale at their own property.

BUDGET SUMMARY REPORT

Mr. Silvia had a report for the period ending September 20, 2011 that was encouraged to be submitted to the Town Council President for signature.

Mr. Yazbak chooses not to sign any report that he did not prepare but he did acknowledge receipt of it.

SCHEDULING OF PUBLIC HEARINGS FOR WETLANDS SETBACK

ORDINANCE AND MU1 AND MU2 ZONING ORDINANCE

MOTION by Mr. Zwolenski, seconded by Mrs. Charest, and voted unanimously on an aye vote to receive the information and transfer it to the Town Clerk for scheduling of a public hearing.

RETAINAGE OF COUNSEL FOR CONTRACT NEGOTIATIONS

Mr. Yazbak had asked Attorney Andrew Prescott if there were other options to the town paying an hourly fee to him for contract negotiations.

Mr. Prescott issued a fixed fee proposal for IBPO negotiations for 2011/2012 at a cost of \$13,000.

MOTION by Mr. Zwolenski, seconded by Mrs. Charest, and voted unanimously on an aye vote at 10:30 P.M. to extend the meeting to 10:45 P.M.

(Mr. Zwolenski left the meeting at 10:33 P.M.)

Because there were some unanswered questions, MOTION by Mr. Yazbak, seconded by Mrs. Charest, and voted 4 to 0 on an aye vote to table this discussion to November 7th in executive session. Mr. Prescott would be invited to attend.

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ESTABLISHMENT OF BID LIST

Mr. McGee commented that the town always solicits donations from the local business community but then the town doesn't seem to use their services for any local projects.

Ms. Hamilton felt that her administration does use local services when possible.

Mr. Yazbak said that if a purchase is less than \$3,000 then the vendor can be asked directly for a quote but the town cannot start directing or showing favoritism for bids.

If there is a particular business in mind, Mrs. Charest suggested passing along the name to Ms. Hamilton.

MOTION by Mrs. Charest, seconded by Ms. Alves, and voted 4 to 0 on an aye vote to adjourn at 10:40 P.M.

Respectfully submitted,

Debra A. Todd, Town Clerk